

CRIMINAL LAW (UNLAWFUL CONSORTING AND PROHIBITED INSIGNIA) BILL 2021

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon NICK GOIRAN: In just finishing up the consideration of clause 1, we are dealing with the issue of the information that the Western Australia Police Force has provided to the government and also to the opposition about the likely percentage of child sex offenders who will be—I have used the word “captured” by the new consorting scheme. I guess the parliamentary secretary picked me up on that insofar as what I mean by “captured” is those who will most likely receive a consorting notice. It appears, from the information provided by the police to the government and the opposition, that it is anticipated that approximately five per cent of the 800 child sex offenders at the moment will receive one of these clause 9 consorting notices because of the information already with police that suggests that these individuals meet the necessary criteria. At the present time, WA police does not have any information about the other 95 per cent that might indicate that they will be subject to one of these clause 9 consorting notices. All these things are very heavily caveated upon the information provided to the government and the opposition that a detailed analysis of these 800 individuals will be undertaken over the course of the next three years. But as best as the police can identify at this point in time, they anticipate that five per cent, which is approximately 40 individuals, will be issued with one of these clause 9 consorting notices.

Of course, it goes without saying—I know that the government will hasten to draw this to our attention—that it is the intention of the government and WA police to issue many more consorting notices, including to some outlaw motorcycle gang types and so on and so forth—all those who would otherwise qualify. That is understood and supported by the opposition. The concern that we continue to have, however, is about the other 760 child sex offenders. The parliamentary secretary has quite rightly drawn to our attention that at the moment the other 760 have received a notice at some point. At some time since 2004 and, in essence, yesterday or even today, these approximately 760 individuals have received a notice. There is no time period associated with that warning. I should say warning rather than notice. Some of them may have had a warning for many years. But, of course, the danger here is that in approximately three years, those 760 individuals will no longer have a statutory warning that puts them at risk of a prosecution. They currently have that, which is one of the powerful deterrents of the existing warning scheme. One of our arguments is that perhaps there have not been many prosecutions and charges laid because some of these individuals have adhered to the warning. But once they are no longer warned, do we suddenly run the risk of some of these 760 individuals—it is an approximate number—carrying on in a way that we do not want them to. That remains the risk. I cannot say that any satisfactory explanation has been provided by the government in that regard. But as I say, we are coming to the conclusion of our consideration of clause 1 and some of these issues can always be unpacked further at clause 9. However, I make the observation at this point, parliamentary secretary, and also to assist the Attorney General, who was very robust in his response on this, particularly to the Leader of the Liberal Party in the other place, that at the moment, approximately 800 warnings have been given to child sex offenders, yet, evidently, 800 consorting notices will not go out under clause 9. It will simply not happen because WA police do not have that information. They said so themselves. They have information about five per cent of those people. Sure, they may find out some more information in due course—that may well happen—but in the absence of that new information, or fresh evidence, a large proportion of those offenders will no longer be subject to a statutory warning process and will be ineligible for a consorting notice. It is not even satisfactory to call it a majority; it is a massive majority of 95 per cent. If they were eligible for a consorting notice, WA police would issue them with one. That remains the concern of the opposition at this point.

Hon MATTHEW SWINBOURN: Hon Nick Goiran indicated that he was wrapping up on that point. I do not want to delay the progress of clause 1 any further, but I want to make a couple of small points, if I can, about the five per cent. The five per cent are those who are available for immediate coverage under the current scheme. The other 95 per cent the member referred to will remain warned under section 557K for the three-year transitional period. Over that period, police will review every single one of those offenders and determine whether a new consorting notice should be issued to them prior to the end of the transitional period. We will not get to a point at the end of the three-year period when we fall off a cliff and a group of people who ought still to be subject to a consorting notice or warning are no longer subject to any regime at all. The Ombudsman’s reports will happen every 12 months. They will commence 12 months from the commencement of the bill—from the proclamation date, to be precise. Therefore, we will have those reports in Parliament. I am sure that of all the members here, Hon Nick Goiran will be the member who gives most regard to how those consorting notices are being issued.

We do not want to see—it is not our intention and we do not think it will happen—child sex offenders, who are a risk to the community from their consorting, not being covered by this scheme or the existing scheme going forward. I take the points the member made, but we will not agree on them. As I said, we do not think we will end up with

a whole heap of child sex offenders who will be free to engage in consorting behaviour who would otherwise have been covered by section 557K.

Hon NICK GOIRAN: At the moment, are the criteria for a police officer to issue a consorting warning lower than the criteria that will be applicable for a consorting notice under clause 9?

Hon MATTHEW SWINBOURN: I thought there was a risk that the member would ask me further questions on this point if I got up. The criteria are different. It is not that they are lower or that sort of thing; it is just that there are different criteria. We covered this earlier in the extension of the provisions for who can be consorted with. Currently, it is a convicted child sex offender, as opposed to a convicted child sex offender and anyone who has been convicted of an indictable offence. They are the different sorts of elements of it. Also, the warning is obviously an element of the current system in the terms that the member described, which is that a police officer can issue a warning. We talked earlier about the practical operational side of that. Obviously, the new scheme will have a more formalised structure around the issuing of a notice. Once a notice is issued, we think that the threshold to deal with offenders who do not comply with the requirements of the notice will enable us to obtain a successful prosecution and get them back in jail, if that is what is needed, because a lot of those people might be on parole and those sorts of other areas, so it will provide a much greater sense of protection for the community.

Hon NICK GOIRAN: I am satisfied to take up this issue further with the parliamentary secretary at clause 9.

Clause put and passed.

Clause 2: Commencement —

Hon NICK GOIRAN: The parliamentary secretary will see at clause 2(b) that, in essence, everything in the bill before us, with the exception of part 1 and clause 67, is subject to commence on a day fixed by proclamation. I am mindful of the multiple reports about proclamation dates, including the 124th report by the Standing Committee on Uniform Legislation and Statutes Review. Recommendation 5 of that report states —

Whenever practicable, commencement provisions should specify the date or dates when provisions of an Act are to come into operation.

It goes on to say at page 19 of the report —

The Committee's view on clauses that provide for commencement by proclamation is that they impinge on the Parliament's sovereignty. Commencement by proclamation is controlled by the Executive, rather than Parliament, and there should be sound reasons for Parliament to permit this. The Committee has said that it is conceivable that a proclamation might never be made and the will of the Parliament, in passing a Bill, would be frustrated. The Committee considers that Parliament should, *prima facie*, be responsible for setting the date when its laws are to come into effect.

Does the government have sound reasons for allowing the executive to control when these laws are to come into effect rather than Parliament?

Hon MATTHEW SWINBOURN: This is a hoary old chestnut, I think. In this particular instance, the good reasons are that the government's intention is to commence the act as soon as possible. I think the member's point would be: then why not just say "the day after proclamation"?

Hon Nick Goiran: The day after assent.

Hon MATTHEW SWINBOURN: Assent, sorry. Yes, that is right. In relation to this, there was a desire, out of an abundance of caution, to have some flexibility for the circumstances in which a very precise commencement day could provide operational difficulties for WA Police and those sorts of things. We do not have anything that says to us that that will happen. It is simply the case that we wanted to maintain flexibility in the commencement clause for that possibility with respect to this bill. All the language of government and all the language of WA police has been that we want to get this up and going. I think the member would probably accept that that is in fact a true reflection of what we want to achieve. Therefore, our reason—whether the member would describe it as a good one or not—is that we did not want to have the inflexibility of a date within the commencement clause that was set in stone, for want of a better word.

Progress reported and leave granted to sit again, on motion by Hon Matthew Swinbourn (Parliamentary Secretary).